

AUDIT REFERRAL # 03-03



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: James A. Pehrkon *[Signature]*
Staff Director

Robert J. Costa *[Signature]*
Deputy Staff Director

FROM: Joseph F. Stoltz *[Signature]*
Assistant Staff Director
Audit Division

Wanda Thomas *[Signature]*
Audit Manager

Marty Kuest *[Signature]*
Lead Auditor

SUBJECT: Keyes 2000, Inc. (20-0008) – Referral Matters

On December 12, 2002, the Commission approved the final audit report on Keyes 2000, Inc. The final audit report was released to the public on December 26, 2002 and includes five findings that meet the criteria for referral to your office for possible compliance action (see attachment).

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Marty Kuest or Wanda Thomas at 694-1200.

Attachment:

- FAR Findings II.B. (Apparent Excessive Contributions From Individuals), II.C. (Receipt of Currency in Excess of Limitation), III.A. (Apparent Non-Qualified Campaign Expenses), III.B. (Costs Associated With Continuing to Campaign) and III.D. (Stale-Dated checks).

II. AUDIT FINDINGS AND RECOMMENDATIONS – NON REPAYMENT MATTERS

B. APPARENT EXCESSIVE CONTRIBUTIONS FROM INDIVIDUALS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office, which in the aggregate, exceed \$1,000.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer shall be responsible for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitation set forth at 11 CFR 110.1. Contributions which on their face exceed the contribution limitations set forth at 11 CFR 110.1 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set for in 11 CFR 110.1 when aggregated, may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that a contribution, which appears to be illegal under 11 CFR 103.3(b)(3) and is deposited into a campaign depository, shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository or maintain sufficient funds to make all such refunds.

Section 110.1(k)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, that if a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person.

Sections 110.1(k)(3)(ii)(A) and (B) of Title 11 of the Code of Federal Regulations state, in part, that a contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and if within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to attributed to each contributor if the equal attribution is not intended.

Section 110.1(l)(3) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor.

Sections 9038.1(f)(1), (2) and (3) of Title 11 of the Code of Federal Regulations, state, that in conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violation identified in such a sample may become the basis, in whole or in part, of any

audit finding. A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample. Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b)(1), (2) or (3).

A review of disclosure reports revealed that Keyes 2000 disclosed the receipt of 78 excessive contributions dating back to 1997. Indeed, 69 excessive contributions disclosed on Keyes 2000's first report (Mid Year 1999) were, at the time they were disclosed, outside the time that they might have been resolved timely. Keyes 2000 only began to address excessive contributions in April 2000. In response to questions raised about this issue by the Reports Analysis Division, the Treasurer, on September 29, 2000, wrote "...in April 2000 we refunded \$27,101.55 of the donations over \$1,000.00."

Although these refunds were disclosed as having been made in April 2000, the checks were not mailed until December 2000. Beginning in January of 2001, the checks began to clear the account. By the first week of February, 43 checks, totaling \$19,140, (of 69 written) had been cashed. Even if the checks had been mailed when prepared, none of the refunds would have timely resolved an excessive contribution. Based on these facts, it appears that Keyes 2000 had no policy to address the timely resolution of excessive contributions.

The sample review of contributions from individuals indicated that Keyes 2000 failed to resolve a substantial number of excessive contributions. The sample projected that the total dollar value of the unresolved excessive contributions in the population was \$163,200. In addition to this, \$5,000 was identified in a 100% review of selected contributions. Thus, the Audit staff concluded that Keyes 2000 failed to resolve excessive contributions totaling \$168,200 and must pay this amount to the United States Treasury.

At the exit conference, Keyes 2000 was provided with a spreadsheet of the sample errors for unresolved excessive contributions as well as documentation to support that the sample contributions were excessive. The Treasurer expressed his concern that because of the magnitude of the projection for unresolved excessive contributions, untimely resolved contributions¹ were included. He stated that he could not understand how the sample error projection was calculated. Despite the Audit staff's explanation that only exceptions involving unresolved contributions were used to make the projection, he stated he was unconvinced.²

In a statement provided subsequent to the exit conference the Treasurer stated the following:

¹ *Untimely resolved contributions* means excessive contributions that were either refunded or reattributed to another contributor outside the 60-day time period provided for by 11CFR §103 3(b)(3).

² Subsequent to the exit conference, the Treasurer was provided with a detailed explanation of the "Dollar Unit Sampling" program used by the Audit staff, including the background, statistical theory and the computer code for the sampling program.

"I am attaching a spreadsheet that shows exactly and completely which excessive contributions have not yet been refunded. This spreadsheet was available to the auditors in March of 2001. Because the method of using sampling to determine the excessive contributions amount is both unintelligible and far in excess of the actual amount, I contend that the auditors need to confirm the data in this spreadsheet and adjust this amount down to accord with the facts. Moreover, I have the e-mail that the lead auditor wrote to me advising me to suspend our ongoing refund efforts, and stating that if Keyes 2000 continued to refund excessive contributions after sixty days, those same amounts would also have to be repaid to the US Treasury anyway – doubling the Committee's financial liability. As we learned in the February 15th meeting, this is not necessarily the case, yet we suspended our refund efforts on this FEC advice. Moreover, an imputation was made during the February 15th meeting that the Committee might face increased legal liability because of the remaining unrefunded excess contributions. This feels like a bait and switch."

The Audit staff advised the Treasurer on April 9, 2001 that should the audit result in an excessive contribution finding, Keyes 2000 would be required to pay to the United States Treasury a projected amount of unresolved excessive contributions. This projection would not consider as resolved any excessive contribution that was untimely refunded after the commencement date for the audit, January 16, 2001. Any such contributions would be considered unresolved. It was recommended that Keyes 2000 not issue any more untimely refunds of excessive contributions.

The spreadsheet provided with Keyes 2000's statement did not provide documentation to show that the excessive contributions identified as sample errors were not excessive or that a corrective action had been taken. As such, the Audit staff projection of \$168,200 for unresolved excessive contributions remained unchanged.

In the preliminary audit report the Audit staff recommended that Keyes 2000 provide documentation to demonstrate that the contributions identified as sample errors were not excessive. Such documentation should include copies of timely negotiated refund checks or timely signed and dated reattribution letters. Absent such documentation, the Audit staff recommended that Keyes 2000 make a payment of \$168,200 to the United States Treasury.

Keyes 2000 did not comply with the Audit staff's recommendations. Instead, they provided a schedule of contributors who made excessive contributions and copies of letters from contributors for reattributing their contributions. The schedule indicated what action, if any, was taken to address the excessive contributions.

Keyes 2000 also provided a written response that acknowledged a "failure to successfully adhere to the sixty-day deadline for refunds" of contributions due to a breakdown in procedures and problems with the campaign data management software. The response acknowledges that that nearly \$90,000 in unresolved excessive contributions remains.

None of the materials provided by Keyes 2000 demonstrated that the contributions identified as sample errors or those identified in the 100% review were not excessive. Rather, the schedule confirmed the contributions as either unresolved or untimely refunded after the start of audit fieldwork.

The Audit staff's projection of \$168,200 for unresolved excessive contributions was not changed as a result materials provided in Keyes 2000 response. However, the Commission has recently adopted new regulations which allow committees greater latitude to reattribute contributions to joint account holders and the Commission has applied these new provisions to current matters. Accordingly, the Audit staff reevaluated the sample results under the revised regulations. This reevaluation resulted in a reduction to the number of excessive contribution sample errors and a corresponding reduction of the projection for excessive contributions. The new excessive contribution projection is \$95,286.

Recommendation #1

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$95,286.

C. RECEIPT OF CURRENCY IN EXCESS OF LIMITATION

Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations states that a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

Section 441g of Title 2 of the United States Code states that no person may make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

Section 9038.1(f)(3) of Title 11 of the Code of Federal Regulations states, in part, that within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contribution not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR §103.3(b)(1), (2) or (3).

The Audit staff identified 89 deposits, each containing currency greater than \$50. The total for these currency deposits was \$39,243. Keyes 2000 provided documentation for 45 deposits that were associated with events. The remaining 44 currency deposits were not satisfactorily explained. These deposits totaled \$19,039. After allowing for one permissible \$50 anonymous currency contribution from each deposit, Keyes 2000 received excessive anonymous currency contributions in the amount of \$16,839.

At the exit conference, the Treasurer and Chief-of-Staff wanted to know why the candidate's itineraries³ were not used to answer any questions concerning the large currency deposits. The Treasurer also stated that the cash contributions were deposited within 24 hours of the date of the event where they were received.

In a statement provided subsequent to the exit conference Keyes 2000 stated:

³ Though requested during audit fieldwork, the Candidate's itineraries were not made available for Audit staff review until the Exit Conference.

"Each cash contribution in question has been matched to the candidate's daily schedules, staff travel itineraries, and campaign events where small donor fundraising solicitation was made. The documents which specified these travel and event fundraising efforts, correlated to the Committee's bank records of receipts deposits, were ignored by the audit team. A spreadsheet was provided to the auditors, which shows this information explicitly. At the Exit Conference we first learned that this spreadsheet had not been accepted, and some cash receipts were still deemed excessive. All of these cash receipts do qualify under the regulations and should be accepted."

Keyes 2000 was formally advised of the remaining excessive anonymous currency contributions on November 5, 2001, approximately 2½ months prior to the exit conference when the Audit staff sent, via electronic mail, a summary of the audit findings and nine supporting schedules.

Despite the Treasurer's claim of prompt deposit, according to his spreadsheet, 30 of the 44 inadequately documented deposits were not made within ten days of the associated event. In addition, the Treasurer associated several large currency deposits with events that occurred up to 66 days *after* the deposits were made. Explanations for other currency deposits referred to unverifiable events. Finally, the remaining currency deposits were attributed to "white mail" where no attempt was made to identify how many contributions each currency deposit represented.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation for fundraising events associated with the 44 currency deposits noted above that shows that no single anonymous cash contribution in excess of \$50 was received. Absent such a showing, the Audit staff recommended that Keyes 2000 pay \$16,839 to the United States Treasury.

In response to the preliminary audit report Keyes 2000 supplied a revised schedule of cash deposits and stated that it matched each contribution deposit in question to the:

- Candidate's daily schedule;
- Candidate and staff travel itineraries; and
- Campaign events where small donor fundraising solicitations were made.

The schedule, like its predecessor, indicated that 30 deposits were not made within ten days of the associated event. Therefore, for those deposits no adjustments were warranted. However, there were changes related to nine events that corrected earlier assertions that cash deposits were made prior to the dates of the events with which they had been associated. This resulted in a reduction of \$1,826 to the excessive anonymous cash total.

Keyes 2000 also stated that attached contemporaneous documentation supported their position that all of the cash receipts meet compliance under the regulations, and should be accepted as qualified campaign contributions. However, the referenced contemporaneous documentation was not attached to the response to the preliminary audit report.

Recommendation #2

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$15,013 (\$16,839 less \$1,826).

III. AUDIT FINDINGS AND RECOMMENDATIONS – REPAYMENT MATTERS

A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

Section 432(h)(2) of Title 2 of the United States Code states, in part, that a political committee may maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction.

Section 9032(9) of Title 26 of the United States Code defines, in part, the term “qualified campaign expense” as a purchase or payment incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination, and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

Section 9033.11(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses.

Section 9033.11(b) of Title 11 of the Code of Federal Regulations states, in part, that for disbursements in excess of \$200 to a payee, the candidate shall present a canceled check negotiated by the payee and either a receipted bill from the payee that states the purpose of the disbursement or a bill, invoice or voucher from the payee that states the purpose of the disbursement. Where the documents specified above are not available, the candidate or committee may provide a voucher or contemporaneous memorandum that states the purpose of the disbursement. Where the supporting documentation required above is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to, evidence demonstrating that expenditure is part of an identifiable program or project which is otherwise sufficiently documented or evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy. If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee. Purpose means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods and services purchased.

Section 9034.4(a)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, that costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes after he has notified the Commission in writing of his withdrawal from the campaign for nomination.

Section 9038.2(b)(2)(i) and (iii) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. The amount of any repayment under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses

as the amount of matching funds certified to the candidate bears to total deposits, as of 90 days after the candidate's date of ineligibility.

The audit discovered that Keyes 2000 made non-qualified disbursements totaling \$407,378. This amount included a duplicate payment of \$12,000, undocumented disbursements of \$314,880 (\$127,433 from the operating account and \$187,447 from the travel account) and \$80,498 in cash disbursements in excess of the \$100 limit.

At the exit conference the Treasurer, citing regulations at 11 CFR 102.9(b), could not understand why the bank statements from the travel account, by themselves, did not constitute adequate documentation. The Audit staff explained that pursuant to 11 CFR §9033.11, the committee must show that expenses were qualified and made in connection with Ambassador Keyes' campaign for nomination. The documentation standards for publicly funded campaigns are more stringent than those applicable to non-publicly funded campaigns.

In statements provided subsequent to the exit conference, the Treasurer wrote:

"During the course of the audit I asked repeatedly for a list of expenditure qualification problems, yet I received minimal specifics. Documented responses to specified requests by the auditors were submitted to the FEC as quickly as possible. We are asking that the Audit Division of the Federal Election Commission finish reviewing the documentation provided them, and only then give us an "Exit Memo" specifying missing documentation. We need one list, with all of the pertinent insufficiencies, including the reason for non-qualification, of all non-qualified expenses."

Beginning on February 1, 2001, the Audit staff made numerous requests to the Treasurer for documentation and for campaign itineraries. Requests for additional disbursement documentation were made on April 10th, July 17th, and August 15th. On November 5, 2001, a detailed summary of prospective audit findings along with detailed schedules supporting each area of concern was provided. Finally, on February 15, 2002, at the exit conference, a detailed schedule of disbursements considered to be non-qualified for lack of documentation was provided to Keyes 2000.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide evidence documenting that the disbursements described below were qualified campaign expenses.

1. Duplicate Payment to Vendor

Keyes 2000 made a duplicate payment to MDS Communications. Two invoices from this vendor totaling \$12,000 were paid on February 22, 1999. These two invoices were mistakenly batched with three additional invoices and paid a second time on April 2, 1999.

In the response to the preliminary audit report, Keyes 2000 concurred with the Audit staff that the duplicate payment was made.

2. Undocumented Disbursements

A review of operating disbursements indicated that Keyes 2000 failed to adequately document 61 disbursements totaling \$127,433. For these disbursements, neither

documentation such as receipted bills, invoices, vouchers or contemporaneous memoranda was available for review, nor could these disbursements be associated with an identified program, policy, reoccurring expense or other collateral evidence to document them as qualified campaign expenses.

Canceled checks were not available for four of these disbursements totaling \$1,238. For the remaining disbursements, canceled checks were the only documentation maintained. The canceled checks alone, lacking a purpose on the memo line, failed to document the disbursements as qualified campaign expenses.

Nine checks, totaling \$69,746, were identified, by the purpose on their memo line, as travel-related disbursements. Listed purposes included "reimbursement," "expenses," "travel expenses," and "travel reimbursement" which, without further information, are not sufficient to establish that the expenses were incurred in connection with Ambassador Keyes' campaign for nomination.

Individuals received sixteen checks, totaling \$19,962, identified as "reimbursements" by their memo entries. Four checks totaling \$1,539 had memo entries that were too vague to identify their purpose. Without additional documentation such as receipts or invoices, it is not possible to establish the campaign purpose of these disbursements. Three checks totaling \$5,385 were payable to two individuals for consulting. Consulting contracts were not provided and the payees did not endorse two of the three checks. Finally, twenty-five checks totaling \$29,563 lacked any memo entry.

In response to the preliminary audit report, Keyes 2000 provided documentation that demonstrated that \$117,626 of the \$127,433 in disbursements described above were qualified campaign expenses, leaving \$9,807 in disbursements undocumented.

3. Undocumented Expenses from the Travel Account

In June of 1999, Keyes 2000 opened an account at First Union Bank and issued debit cards to several key campaign personnel to be used for campaign travel expenses. All disbursements from this account were made by debit card. Campaign personnel did not retain documentation from vendors for disbursements from this account. The only documentation retained and provided were account statements that itemized each disbursement in chronological order. The information provided was limited to a transaction date, an eighteen-character field to identify the name of the vendor, and the City and State where the transaction occurred. Without some collateral evidence showing the connection between the expenses and the campaign efforts, these expenses were insufficiently documented. Originally, expenses totaling \$594,385 were insufficiently documented. However, the candidate itineraries supplied at the exit conference provided collateral evidence to document \$406,938 in expenses as campaign related, reducing the amount not documented to \$187,447.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation such as receipted bills, invoices, or vouchers, from the payees, that stated the purpose for the disbursements; contemporaneous memoranda; or other collateral evidence⁴ to support the remaining \$183,986¹¹ undocumented disbursements as qualified

⁴ Collateral evidence may include but is not limited to: evidence demonstrating that the expenditure is part of an identifiable program or project that is sufficiently documented; or evidence that the disbursement is covered by a pre-established written committee policy.

campaign expenses. Except for providing two canceled check copies,⁵ Keyes 2000 did not comply with the recommendation. Instead, Keyes 2000 generated and provided schedules to describe how the disbursements from the travel account were documented.

The undocumented expenses presented in the preliminary audit report consisted of:

a. Expenses incurred from 1/3/00 through 2/3/00

Candidate itineraries for the period 01/03/00 through 02/03/00 were not provided. The preliminary audit report contended that travel account expenses totaling \$83,593 paid during this period were undocumented.

In response to the preliminary audit report, Keyes 2000 submitted a *Schedule of Travel Disbursements 1/01/00 thru 02/02/00*. This listing of disbursements from the travel account included a vendor name, date, amount, purpose and Keyes 2000's "reason for compliance" for each transaction. For each entry, the reason for compliance was stated as "Travel and Related Expenses Other" followed by a brief description of the purpose for the disbursement.

The schedule was generated in response to the preliminary audit report and therefore, is not a contemporaneous memorandum. Further, the schedule does not demonstrate that the disbursements were made as part of an identifiable program or covered by a pre-established written policy. Therefore travel account expenses totaling \$80,132 (\$83,593 less the two checks totaling \$3,461) paid during this period remain undocumented.

b. Travel Expenses as Winding Down Costs

From June 7 through December 8, 2000, Keyes 2000 spent \$76,489 on travel. The regulations at (11 CFR §9034.4(a)(3)(i)) allow necessary administrative costs associated with winding down the campaign. Expenses included in administrative costs are office space rental, staff salaries and office supplies. Keyes 2000 had not established the connection between this travel and administrative expenses allowed during winding down. Therefore, the Audit staff considered these expenses to be non-qualified campaign expenses.

In response to the preliminary audit report, Keyes 2000 submitted three schedules:

1. *Wind Down Travel Table – First Union Account* - This is a schedule of disbursements, paid from the travel account during the period, which lists the disbursements by category (airfare, lodging, and transportation).
2. *Wind Down Administrative Table – First Union Account* - This is a schedule of disbursements, paid from the travel account during the period, that are administrative in nature (expenses for telephone, general office expense, and office supplies.)

⁵ These checks document expenses of \$3,461 and this reduces the undocumented travel account disbursements from \$187,447 to \$183,986.

3. *Schedule of Wind Down Travel – Itinerary Documentation for Non-Qualified Campaign Expenditures* – This is a schedule that lists the candidate's travel during the period June 8, 2000 through December 6, 2000. For each date, the schedule lists personnel, location, airline city of departure and arrival, type of event, hotel, car service and a "reason for expenditure qualification." For each date, the stated reason is: "Costs associated with terminating political activity and debt retirement; Trip is allocable to Committee sustaining positive public relations and donor support necessary for wind down funding."

Keyes 2000 stated in its written response that "All travel and associated costs funded by the Committee in this period represent either compliance, or legitimate and essential fundraising and contributor solicitation expenditures." However, in the opinion of the Audit staff, the documents provided do not support Keyes 2000's contention that the travel and activity that occurred after June 6, 2000, was related to winding down the campaign. In fact, they suggest that Ambassador Keyes was engaged in activity not connected with winding down his campaign.

Ambassador Keyes engaged in fundraising for the benefit of entities other than Keyes 2000. He raised money on behalf of two individuals, two right-to-life committees, a county republican committee, and a church mission. He also attended an event described as a fundraising reception at which he met with "\$10,000 donors." Nothing on the itineraries suggests that he was engaged in raising money for Keyes 2000. There is an indication that he received two honoraria: \$5,000 from a church and an indeterminate amount, a "love offering" in the form of a check to be made payable to AKE⁶. Between July 31, 2000, and August 3, 2000, during the Republican National Convention, Ambassador Keyes made three trips to Philadelphia and attended several events. On August 2, 2000, he held a "Keyes 2000 Hospitality Suite – Birthday Party" for himself. In late September, he participated in a debate whose topic was "Does Organized Religion Have The Answers To The Problems Of The 21st Century?" He made speeches on behalf of the Christian Coalition, the Tennessee Right to Life committee, Michigan Catholic Radio Anniversary Celebration, the Calvary Chappel Church and the New City Jewish Center. His topics ranged from "The Moral Disintegration In America" to "The Future Of The Conservative Movement In This Country" to "Israel And Zionism In The 21st Century." The itinerary for November 12, 2000, showed that he appeared in a two-hour election special; this was not included on the *"Schedule of Wind Down Travel"*.

The lack of documentation such as receipted bills, invoices, or vouchers, from the payees; contemporaneous memoranda; or other collateral evidence; prevents the Audit staff from concluding that the disbursements represent legitimate winding down costs. Further, available documentation suggests that Ambassador Keyes was engaged in activity unrelated to the wind down effort of his campaign. The schedules provided by Keyes 2000 were generated in response to the preliminary audit report and are not contemporaneous memoranda. Therefore, the Audit staff considers these expenses totaling \$76,489 to be non-qualified campaign expenses.

c. Cash Withdrawals

Cash withdrawals totaling \$27,365⁷ were made from the travel account. No documentation of the amounts spent from these cash advances was provided. The

⁶ AKE is an acronym for Alan Keyes Enterprises, Inc.
⁷ Also See Finding II.A., Cash Disbursements.

Candidate's itineraries supplied at the exit conference did not offer any information as to how the cash was spent.

In response to the preliminary audit report, Keyes 2000 asserted that the cash disbursements were documented. The response stated that "under 11 CFR 9033.11 (b)(iv)(A) [sic.], the itemized bank statements, collated with the Candidate's itineraries offer information as to how the cash was spent among campaign staff and functionaries for meals, incidentals, and local travel." To support this, Keyes 2000 cited the following:

- The cash disbursements were part of an identifiable personnel policy to provide travel advances for the staff;
- The First Union bank statements served to "voucherize" each advance by designating by debit card number the staff member making the withdrawal; and
- The policy for facilitating travel advances is substantiated by lining up daily data on the itineraries with withdrawals on the bank records.

The response also stated that supplemental documentation that demonstrated pre-established written campaign policies, was previously submitted to the Audit staff in the form of memoranda and captured email communications.

In the Audit staff's opinion, Keyes 2000 has not provided adequate documentation for the cash disbursements. Documentation of pre-established written campaign policies was not previously submitted as stated. Copies of the referenced memoranda and captured email communications were not included in the preliminary audit report response and none of the materials submitted in the response provides evidence that such policies existed. Furthermore, the response did not identify the staff members to whom the debit cards were assigned or the corresponding debit card numbers. Finally, the response provided nothing to demonstrate how the itineraries, when "lined up" with the bank records, provide adequate documentation for the cash withdrawals. The materials provided in the response to the preliminary audit report do not comply with the documentation requirements of 11 CFR §9033.11 or demonstrate that the disbursements do not violate the prohibition on cash disbursements. Therefore, Keyes 2000 has not shown that cash disbursements, totaling \$27,365, were qualified campaign expenses.

4. New Hampshire Cash Disbursements

As previously noted, Keyes 2000, in the course of conducting campaign activity in New Hampshire, made 122 cash disbursements, each in excess \$100.⁸ The disbursements total \$80,498.

Although a number of checks were identified which, when cashed, may have provided the funds to make the cash disbursements in New Hampshire, no specific or direct connection between the disbursements and funds available can be made.

As stated above in *Finding II.A., Cash Disbursements*, Keyes 2000's acknowledged that cash disbursements were made from the New Hampshire account. The

⁸ Also See Finding II A., Cash Disbursements.

preliminary audit report response stated "...the cash money represents disbursements transactions by checks from a Committee depository for legitimate and authorized expenditures, they are documented and those transactions in justice should be deemed qualified campaign expenses."

The Audit staff concludes that cash disbursements from the New Hampshire account totaling \$80,498 are non-qualified campaign expenses because they violate the prohibition on cash disbursements set forth at 2 USC §432(h).

In summary, Keyes 2000 made non-qualified disbursements totaling \$288,876. This amount includes the duplicate payment of \$12,000, non-qualified campaign expenses of \$2,585⁹ for convention activity, undocumented disbursements of \$274,291 (\$9,807 from the operating account and \$183,986 from the Travel Account and \$80,498 in cash disbursements in excess of the \$100 limitation).

Recommendation #3

The Audit staff recommends that the Commission determine that a pro rata repayment of \$74,439 (\$288,876 multiplied by the repayment ratio of .257686¹⁰) is payable to the United States Treasury.

B. COSTS ASSOCIATED WITH CONTINUING TO CAMPAIGN

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states if the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section. Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR §9038.8.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any expenses incurred after a candidate's date of ineligibility under 11 CFR §9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR §9034.4(a)(3).

Section 9038.2(b)(2)(i) of Title 11 of the Code of Federal Regulations states, that the Commission may determine that amount(s) of any payment made to a candidate from the matching payment account were used for purposes other than defrayal of qualified campaign

⁹ See Finding III.B. Costs Associated with Continuing to Campaign; explanation at footnote #19.

¹⁰ This figure (.257686) represents Keyes 2000's repayment ratio as calculated pursuant to 11 CFR §9038.2(b)(2)(iii).

expenses, repayment of loans which were used to defray qualified campaign expenses and restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9038.2(b)(2)(ii)(D) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may make a repayment determination under 11 CFR 9038.2(b)(2) for funds, described in 11 CFR 9038.2(b)(2)(i), which were expended for costs associated with continuing to campaign after the candidate's date of ineligibility

The Commission determined that Ambassador Keyes' date of ineligibility (DOI) was April 20, 2000. Ambassador Keyes chose to continue to campaign until June 7, 2000, when he formally withdrew from active campaigning. At the time of the PAR it appeared that during the period that Ambassador Keyes continued to campaign, Keyes 2000 incurred expenses of \$782,711. To partially offset these expenses, Keyes 2000 received contributions totaling \$450,440. The balance, \$332,271 appeared to have been paid with funds containing matching funds; and as such, subject to a pro rata repayment to the United States Treasury.

At the exit conference the Treasurer acknowledged that Ambassador Keyes had, indeed, continued to campaign but pointed out that as soon as there was a decision concerning the Arkansas primary results, this issue would be resolved.¹¹ Further, the Treasurer contended that there were serious errors in how the Audit staff presented this issue.

In a statement provided subsequent to the exit conference the Treasurer stated:

"Repayment Due to Continuing to Campaign: This number will diminish considerably when the auditors look at the actual bills for goods and services in the accounts payable, which were paid during the period of ineligibility, but which were incurred previous to DOI. Rectifying these errors will significantly lower the repayment amount due to Continuing to Campaign."

The \$782,711 in expenses identified, as having been incurred during the period did not include expenses incurred prior to DOI as determined by the Audit staff using the records available during audit fieldwork. The Treasurer was provided detailed spreadsheets supporting the amounts presented in this finding. Documentation was not provided to address specific items about which the Treasurer believed mistakes were made.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation to demonstrate that matching funds were not used to fund the continuing to campaign effort between April 20, and June 7, 2000. Absent such documentation, the preliminary audit report stated that the Audit staff would recommend that the Commission determine that \$85,622 (\$332,271 multiplied by the repayment ratio, .257686) was repayable to the U.S. Treasury.

In response to the preliminary audit report, Keyes 2000 stated, "the Committee is pursuing a reconsideration of the DOI based on a favorable determination

¹¹ Ambassador Keyes received 19.8% of the vote in the Arkansas primary. He needed to receive 20% of the vote to reestablish his eligibility to receive matching funds. Keyes 2000 is currently attempting through legal action, to persuade the Arkansas authorities to round up his election results to 20%.

concerning the Arkansas primary results. Such a determination would of course render moot the CTC [Continuing to Campaign] issue of non-qualified campaign expenses.”

Regardless, Keyes 2000 “...asserts that it incurred expenses during the CTC period commensurate but not in excess of the contributions noted.”¹² However, a schedule provided in the response to the preliminary audit report suggests that Keyes 2000 has acknowledged spending \$35,720 in excess of the amount of funds available to campaign.

In response to the preliminary audit report, Keyes 2000 presented documentation that showed that disbursements totaling \$215,817¹³ paid during the period were for goods and services provided prior to DOI or following the CTC period. This reduced the amount spent during the period from \$782,711 to \$566,894, or \$116,454 in excess of the amount available for use during the period.

Recommendation #4

The Audit staff recommends that the Commission determine that \$30,009 (\$116,454 multiplied by the repayment ratio of .257686) is repayable to the United States Treasury.

D. STALE-DATED CHECKS

Section 9038.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributions that have not been cashed, the committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff identified 27 stale-dated checks totaling \$8,003. Twenty-four of the stale-dated checks represented refunds to individuals of excessive contributions.

At the exit conference the Treasurer noted that the listed checks had been voided. He also expressed concern that the payment for outstanding refund checks constituted double counting.¹⁴

In a statement provided subsequent to the exit conference the Treasurer stated:

“Stale Dated Checks: Although we have been assured that these checks were not included in the Unresolved Excessive Contributions, we can not confirm this assertion, because we can not determine how the FEC number was generated. The Stale Dated Checks in question have been voided.”

¹² “Contributions noted” refers to the \$450,440 in contributions that were available to Keyes 2000 to spend during the period April 21, 2000, through June 7, 2000, for continuing to campaign activity.

¹³ Included in this amount were two reimbursements for expenses incurred for attending the Republican National Convention. Since the convention occurred in the winding down period, these reimbursements were non-qualified expenses to Keyes 2000. These non-qualified expenses were added to non-qualified expenses in Finding III.A. (See footnote #15.)

¹⁴ By double counting, it is the Treasurer’s belief that Keyes 2000 is being forced to refund some excessive contributions twice.

The stale-dated refund checks represent untimely resolved excessive contributions, a category separate from unresolved excessive contributions. These refunds were not a factor in calculating the projected payment due the United States Treasury for the unresolved excessive contributions presented at Finding II.B.

It should be noted that the mere voiding of a stale-dated check does not obviate the requirement to pay the amount of the check to the United States Treasury. Keyes 2000 must demonstrate that the obligation for which the check was written has been satisfied or that the obligation never existed.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide evidence that the checks were not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks were voided and that no obligation exists. Absent such evidence, the Audit staff recommended that \$8,003 was payable to the United States Treasury.

Keyes 2000's response to the preliminary audit report "...asserts that the stale-dated checks for over-donors are included in the unresolved excessive calculation of \$89,861.82 at Finding II.B." This is a restatement of the argument presented after the exit conference and addressed above.

Recommendation #5

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$8,003.